IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VAT Appeal No. 15 of 2007 (O&M)
DATE OF DECISION: November 1, 2007

Lakshmi Polyfab, Chandigarh

…Petitioner

Versus

The Union Territory of Chandigarh and another

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. K.L. Goyal, Advocate,
for the appellant.

M.M. KUMAR, J.

This is assessee's appeal filed under Section 68 of the Punjab Value Added Tax Act, 2005 (as applicable to the Union Territory of Chandigarh) (for brevity, 'the VAT Act'), challenging order dated 19.9.2007, passed by the Value Added Tax Tribunal, Union Territory, Chandigarh (for brevity, 'the Tribunal'), in Appeal No. 74 of 2007. The appellant-assessee has claimed that following substantial question of law would arise for determination of this Court:-

> Whether HDPE/PP fabrics are covered by Entry "Textile Fabrics" given in Entry 52 of Schedule A appended to

the Punjab Value Added Tax Act, 2005 (as applicable to the Union Territory, Chandigarh) and, therefore, exempt from payment of tax in the Union Territory of Chandigarh?

Facts are not in dispute. The appellant-assessee is a dealer registered under the provisions of the VAT Act. It deals in the sale of High Density Poly Ethylene/Propylene (for brevity, 'HDPE/PP') poly fabrics. The appellant-assessee was registered as a dealer even before the VAT Act was applied to the Union Territory of Chandigarh, under the provisions of the Punjab General Sales Tax Act, 1948 (as applicable to the Union Territory of Chandigarh) (for brevity, 'the Sales Tax Act'). The appellant-assessee filed their return by placing reliance on Entry 52 of Schedule 'A', which contained the list of tax-free goods. Entry reads "Textile fabric including terry towels". It was claimed that the goods were covered by tax-free entry and no tax was payable. However, the departmental authorities raised an objection. The appellant-assessee filed an application under section 85 of the VAT Act (A-1) to the Excise and Taxation Commissioner, Union Territory of Chandigarh, for determination of the question as to whether HDPE/PP fabrics are covered by Entry Textile fabric given in Entry 52 of Schedule 'A' appended to the VAT Act. The assessee-appellant, inter alia, placed reliance upon a booklet issued by the Bureau of Indian Standards (A-2), claiming that HDPE woven textile were qualified as textile. The Excise and Taxation Commissioner, vide his order dated 20.9.2006 (A-3) opined

against the appellant-assessee holding that the item dealt with by the assessee-appellant is covered by Schedule 'F' of the VAT Act and as such it was taxable @ 12.5%. It was further held that HDPE/PP (Polypropylene) fabric is not covered under Entry 52 of Schedule 'A' of the VAT Act. Thereafter appeal was preferred before the Tribunal (A-4). The Tribunal after detailed examination of the facts came to the conclusion that item in dispute was covered by Entry 58 of Schedule 'B', which is further dealt in 'list of industrial inputs and packing materials'. The list has mentioned HDPE, at Sr. No. 162, as 'packing material item attracting VAT @ 4%'. The view of the Tribunal is discernible from the concluding para, which reads as under:-

> " We have gone through chapter 39 of Central Excise Act and also the list containing goods listed under various headings appended to item No. 58 of Schedule B of VAT Act 2005.
>
> These do not tally with each other. There is no entry in the list of headings of VAT Act 205 with No. 3926 where as there is an entry No. 3926.90 in the list of goods appended with Central Excise Act. The contentions of the learned Counsel for appellant that under repealed Act of 1948 these goods were not taxable is not acceptable because the matter is to be decided under the VAT Act 2005. We are also of the view that the goods in question are not covered under entry 52 of Schedule A of Act of 2005 and the clarification given by

the Commissioner to that extent is correct. The Commissioner has held it taxable at the rate of 12.5% as he observed that these goods find no place in Schedule A or B of the Act of 2005. But entry 58 of Schedule B has not been considered in its correct perspective. List of goods appended to Schedule B contains an entry at 202 pertaining to packing material of all kinds. During the course of arguments neither party has denied that the goods in question are mainly used as packing material in its present form or even in its changed form i.e. bags. Schedule 'B' appended to the Act contains a "List of Industrial inputs and packing materials (see entry No. 58 of Schedule B)" which mentions HDPE at Sr. No. 162 as packing material item attracting Value Added Tax @ 4%. Both, appellant as well as respondent agree that the material is HDPE though in the billing it has been written as HDPE/PP. The primary consideration in deciding the category under which the material in question should fall is whether it is a packing material or not. Looking at it from this crucial aspect the goods in question are covered under item No. 58 read with items 202 and 162 of the list containing goods taxable at the rate of 4%. The order of the Commissioner is thus modified to the extent that tax at the rate of 4% is

leviable upon the goods in question and not at the rate of 12.5%. The appeal is decided in these terms."

Mr. K.L. Goyal, learned counsel for the assessee-appellant has submitted that the Tribunal has committed grave error in law because HDPE may be covered by Entry 58 read with List Item No. 162 of Schedule 'B' but the product like fabrics made from HDPE would not be covered. According to learned counsel, the HDPE in its granular form is different than by-product like fiber and polythene. Learned counsel has emphasised that the assessee-appellant uses HDPE for the purposes of producing polythene sheets/fabrics. In support of his submission, learned counsel has placed reliance on a Division Bench judgment of Madras High Court in the case of **State of Tamil Nadu v. Polyweb Private Ltd., (1982) 51 STC 364** and a Single Bench judgment of Allahabad High Court in the case of **Commissioner of Sales Tax v. Kanpur Plastic Pack (P.) Ltd., (1984) 57 STC 188**. He has further submitted that the specification made by the Indian Standard Institute (ISI) like Annexure A-2, would also be relevant as has been held by Hon'ble the Supreme Court in the case of **Union of India v. Delhi Cloth and General Mills, AIR 1963 SC 791**. According to learned counsel, HDPE, which is in granular form is more like cotton, which can be subjected to various processes to become fabric. He has also stressed that in order to avail the benefit under Entry 52 all that is required to be shown is that the goods in question has to be fabric, which would include artificial plastic material, which is pliable and is capable of

being rapped, folded or wound around. He has pointed out that it is not necessary that the material should be suitable for making garments because there could be cloth suitable only for industrial purposes inspite of the fact that it possesses the basic feature of pliability. For the aforementioned submission, learned counsel has placed reliance on a Constitution Bench judgment of Hon'ble the Supreme Court in the case of **M/s Filterco. v. Sales Tax Commissioner, AIR 1986 SC 626**.

We have gone through the paper book and various orders passed by the Excise and Taxation Commissioner and that of the Tribunal and have also reflected on the submissions made by learned counsel. It would be necessary to first glance through the relevant entries of Schedule 'A' and 'B' along with lists, relevant portion of which are extracted as under:-

" SCHEDULE – A

(See section 16)

LIST OF TAX FREE GOODS

Serial No.	Name of Commodity
1 to 51	xxx xxx xxx
52.	Textile fabric including terry towels
53 to 57.	xxx xxx xxx

SCHEDULE – B

(See section 8)

LIST OF GOODS TAXABLE @ 4 per cent

Serial No.	Name of Commodity

1 to 57	xxx xxx xxx
58.	Industrial inputs and packing materials (as per list appended to the Schedule)
59 to 135	xxx xxxx xxx”

LIST OF INDUSTRIAL INPUTS AND PACKING MATERIALS

(SEE ENTRY NUMBER 58 OF SCHEDULE B)

Serial No.	Heading No.	Description
(1)	(2)	(3)
1 to 161	xx xx	xxx xxx xxx
162.	3901.10.90	High Density Polyethylene (HDPE)
163 to 201	xx xx	xxx xxx xxx
202		All packing material including plastic containers, tin containers and glass containers.
203 to 239	xx xx	xxx xxx xxx”

A perusal of Entry 58 of Schedule ‘B’ would show that it pertains to industrial inputs and packing materials and the detailed list of such items has been given. At Sr. No. 162 of the list, HDPE has been specified, which means it is assessable to 4% under Section 8 of the VAT Act. A perusal of the operative part of the order passed by the Tribunal would show that both the counsel for the appellant as

well as the respondent had agreed before the Tribunal that the material was HDPE though in the billing it was written as 'HDPE/PP'. The order further reveals that the parties could not deny that the goods in question were mainly used as packing material in its present form or even in its changed form i.e. bags etc. Once it is the conceded position that the goods in question were nothing else but HDPE then it has to be concluded that the goods were covered under Entry No. 58 read with Item Nos. 162 and 202, which is assessable to tax @ 4%. We find that it has been correctly concluded by the Tribunal that the goods in question are not covered by Entry 52 of Schedule A as by any stretch of imagination it can not be concluded that it is textile fabrics including terry towels. In fact, Mr. K.L. Goyal, learned counsel for the assessee-appellant has shown the goods to us in the Court, which were thick polythene sheet and after stitching, it could be converted to a polythene bag. By examining the goods as it would be understood in popular sense, we were not left with any doubt that those items would not be covered by Entry 52, which covers textile fabrics including terry towels.

The argument raised by Mr. Goyal, learned counsel for the assessee-appellant based on the judgments in the cases of Polyweb Private Ltd. (supra) and Kanpur Plastic Pack (P) Ltd. (supra), has not impressed us and nor we are inclined to undertake a detailed examination of the aforementioned argument because a perusal of the aforementioned judgments would show that HDPE was part of the statutory schedule or list. On account of absence of HDPE in any of the list, their Lordships' of Madras High Court and

Allahabad High Court have resorted to the interpretation of that expression. Even the question before the Madras High Court was whether HDPE woven fabrics are artificial silk fabrics. However, those facts are not present in the instant appeal. On the contrary, HDPE figures at Sr. No. 162 in the list of taxable items under Entry 58 of Schedule B. The aforementioned Entry 58 under the heading 'industrial inputs and packing materials', has been elaborated to include HDPE, which figure at Sr. No. 162. Once the statute itself has included HDPE as a taxable item then it is not possible for us to take a contrary view that such an item would not be taxable or that such an item has to be considered as textile fabrics including terry towels under Schedule 'A', listing tax-free goods. Thus, the argument is wholly without substance and we have no hesitation to reject the same. The other arguments based on the judgment of Hon'ble the Supreme Court would also not advance the case of the assessee-appellant because the external aid like the standardization by Indian Standard Institute (ISI) could be resorted to in case where there is ambiguity or the item has not been included in the statute. Therefore, reliance on the judgment of Hon'ble Supreme Court in the case of Delhi Cloth and General Mills (supra) is also wholly misconceived. Likewise, where compressed woollen felts, which possesses basic feature of pliability to constitute cloth, as was the position before Hon'ble the Supreme Court in the case of M/s Filterco (supra) would also not be applicable to the facts of the present case.

In view of the above, the instant appeal fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
November 1, 2007 **JUDGE**
Pkapoor

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